

TRANSLATION

PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference 10351	FOR FURTHER ACTION	See Form PCT/IPEA/416
International application No. PCT/JP2004/019330	International filing date (<i>day/month/year</i>) 24.12.2004	Priority date (<i>day/month/year</i>) 25.12.2003
International Patent Classification (IPC) or national classification and IPC A61K35/20, A61K35/74, A61P17/16, A23C21/02, A23L1/30		
Applicant CALPIS CO., LTD.		

<p>1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of <u>5</u> sheets, including this cover sheet.</p> <p>3. This report is also accompanied by ANNEXES, comprising:</p> <p>a. <input checked="" type="checkbox"/> (<i>sent to the applicant and to the International Bureau</i>) a total of <u>1</u> sheets, as follows:</p> <p><input checked="" type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).</p> <p><input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.</p> <p>b. <input type="checkbox"/> (<i>sent to the International Bureau only</i>) a total of (indicate type and number of electronic carrier(s)) _____, containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</p>																										
<p>4. This report contains indications relating to the following items:</p> <table><tr><td><input checked="" type="checkbox"/></td><td>Box No. I</td><td>Basis of the report</td></tr><tr><td><input type="checkbox"/></td><td>Box No. II</td><td>Priority</td></tr><tr><td><input checked="" type="checkbox"/></td><td>Box No. III</td><td>Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</td></tr><tr><td><input type="checkbox"/></td><td>Box No. IV</td><td>Lack of unity of invention</td></tr><tr><td><input checked="" type="checkbox"/></td><td>Box No. V</td><td>Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</td></tr><tr><td><input type="checkbox"/></td><td>Box No. VI</td><td>Certain documents cited</td></tr><tr><td><input type="checkbox"/></td><td>Box No. VII</td><td>Certain defects in the international application</td></tr><tr><td><input type="checkbox"/></td><td>Box No. VIII</td><td>Certain observations on the international application</td></tr></table>			<input checked="" type="checkbox"/>	Box No. I	Basis of the report	<input type="checkbox"/>	Box No. II	Priority	<input checked="" type="checkbox"/>	Box No. III	Non-establishment of opinion with regard to novelty, inventive step and industrial applicability	<input type="checkbox"/>	Box No. IV	Lack of unity of invention	<input checked="" type="checkbox"/>	Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement	<input type="checkbox"/>	Box No. VI	Certain documents cited	<input type="checkbox"/>	Box No. VII	Certain defects in the international application	<input type="checkbox"/>	Box No. VIII	Certain observations on the international application
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Date of submission of the demand		Date of completion of this report																								
Name and mailing address of the IPEA/JP		Authorized officer																								
Facsimile No.		Telephone No.																								

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

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Box No. I

Basis of the report

1. With regard to the **language**, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.
- ☐ This report is based on translations from the original language into the following _____, which is the language of a translation furnished for the purposes of:
- ☐ international search (Rule 12.3 and 23.1(b))
- ☐ publication of the international application (Rule 12.4)
- ☐ international preliminary examination (Rule 55.2 and/or 55.3)
2. With regard to the **elements** of the international application, this report is based on (*replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report*):
- ☐ the international application as originally filed/furnished
- ☒ the description:
- pages 1-10 _____ as originally filed/furnished
- pages* _____ received by this Authority on _____
- pages* _____ received by this Authority on _____
- ☒ the claims:
- nos. 1-5 _____ as originally filed/furnished
- nos.* _____ as amended (together with any statement) under Article 19
- nos.* 6-8 _____ received by this Authority on 25.10.2005
- nos.* _____ received by this Authority on _____
- ☐ the drawings:
- sheets _____ as originally filed/furnished
- sheets* _____ received by this Authority on _____
- sheets* _____ received by this Authority on _____
- ☐ a sequence listing and/or any related table(s) – see Supplemental Box Relating to Sequence Listing.
3. ☐ The amendments have resulted in the cancellation of:
- ☐ the description, pages _____
- ☐ the claims, nos. _____
- ☐ the drawings, sheets/figs _____
- ☐ the sequence listing (*specify*): _____
- ☐ any table(s) related to sequence listing (*specify*): _____
4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).
- ☐ the description, pages _____
- ☐ the claims, nos. _____
- ☐ the drawings, sheets/figs _____
- ☐ the sequence listing (*specify*): _____
- ☐ any table(s) related to sequence listing (*specify*): _____

* If item 4 applies, some or all of those sheets may be marked "superseded."

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Box No. III

Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non obvious), or to be industrially applicable have not been examined in respect of:

☐ the entire international application☒ claims Nos. 5-8

because:

☒ the said international application, or the said claims Nos. 5
relate to the following subject matter which does not require an international preliminary examination (*specify*):

The subject matter of claim 5 relates to methods for treatment of the human or animal body by therapy. Thus, this International Preliminary Examining Authority is not required to carry out international preliminary examination on this subject matter under the provisions of PCT Rule 67.1(iv).

☐ the description, claims or drawings (*indicate particular elements below*) or said claims Nos. _____ are so unclear that no meaningful opinion could be formed (*specify*):

☐ the claims, or said claims Nos. _____ are so inadequately supported by the description that no meaningful opinion could be formed.

☒ no international search report has been established for said claims Nos. 5-8

☐ the nucleotide and/or amino acid sequence listing does not comply with the standard provided for in Annex C of the Administrative Instructions in that:

the written form

☐ has not been furnished☐ does not comply with the standard

the computer readable form

☐ has not been furnished☐ does not comply with the standard

☐ the tables related to the nucleotide and/or amino acid sequence listing, if in computer readable form only, do not comply with the technical requirements provided for in Annex C-*bis* of the Administrative Instructions.

☐ See Supplemental Box for further details.

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Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement																					
1. Statement	<table><tbody><tr><td rowspan="2">Novelty (N)</td><td>Claims</td><td><u>1, 2</u></td><td>YES</td></tr><tr><td>Claims</td><td><u>3, 4</u></td><td>NO</td></tr><tr><td rowspan="2">Inventive step (IS)</td><td>Claims</td><td><u>1, 2</u></td><td>YES</td></tr><tr><td>Claims</td><td><u>3, 4</u></td><td>NO</td></tr><tr><td rowspan="2">Industrial applicability (IA)</td><td>Claims</td><td><u>1-4</u></td><td>YES</td></tr><tr><td>Claims</td><td><u></u></td><td>NO</td></tr></tbody></table>	Novelty (N)	Claims	<u>1, 2</u>	YES	Claims	<u>3, 4</u>	NO	Inventive step (IS)	Claims	<u>1, 2</u>	YES	Claims	<u>3, 4</u>	NO	Industrial applicability (IA)	Claims	<u>1-4</u>	YES	Claims	<u></u>	NO
Novelty (N)	Claims		<u>1, 2</u>	YES																		
	Claims	<u>3, 4</u>	NO																			
Inventive step (IS)	Claims	<u>1, 2</u>	YES																			
	Claims	<u>3, 4</u>	NO																			
Industrial applicability (IA)	Claims	<u>1-4</u>	YES																			
	Claims	<u></u>	NO																			
2. Citations and explanations (Rule 70.7)	<p>Documents cited in the international search report:</p> <p>Document 1: JP 11-98978 A (Calpis Co., Ltd.), 13 April 1999</p> <p>Document 2: JP 10-45610 A (Calpis Co., Ltd.), 17 February 1998</p> <p>Document 3: WO 2000/41572 A1 (Calpis Co., Ltd.), 20 July 2000</p> <p>Document 4: JP 10-95736 A (Calpis Co., Ltd.), 14 April 1998</p> <p>Document 5: JP 2000-239175 A (Calpis Co., Ltd.), 5 September 2000</p> <p>Document 6: JP 2003-81868 A (Ichimaru Pharcos Inc.), 19 March 2003</p> <p>Document 7: JP 2003-135026 A (Sunstar, Inc.), 13 May 2003</p> <p>Document 8: JP 2001-163799 A (Miyagi Chem. Ind.), 19 June 2001</p> <p>Explanation</p> <p>The invention set forth in claims 3 and 4 lacks novelty in the light of documents 1 to 5 cited in the international search report.</p> <p>Documents 1 to 5 set forth fermented milk whey obtained by fermenting milk using <i>Lactobacillus</i></p>																					

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Box No. V

Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability;
citations and explanations supporting such statement

helveticus, and indicate that said fermented milk whey can be used in functional foods, dietary supplements and the like.

Documents 1 to 5 do not indicate that said food has a moisture-retaining activity, but said food is a functional food, and as such there is no discernible difference from the invention of this application as a food.